

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

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Virgie P. Walker,

) No. 2:13-cv-1918-RMG

Plaintiff,

**ORDER**

Honorable Judge Mikell R. Scarborough;

Korn Law Firm, PA; Paralegal Elizabeth A.

Koslarek; Reverse Mortgage Solutions Inc.

for the benefit of Bank of America;

Attorney Dean A. Hayes,

Defendants.

This matter comes before the Court on the Report and Recommendation of the Magistrate Judge (“R&R”) recommending the Court dismiss this action without prejudice and without issuance and service of process pursuant to 28 U.S.C. § 1915. For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

**Background**

Virgie P. Walker, proceeding *pro se* and *in forma pauperis*, filed this action seeking reversal of a state-court foreclosure order and monetary damages. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leake*, 574 F.2d 1147 (4th Cir. 1978). Following this review, the Magistrate Judge issued the

present R&R recommending this case be dismissed for failure to state a claim. (Dkt. No. 19).

Plaintiff failed to file timely objections to the R&R.

### **Legal Standard**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Under 28 U.S.C. § 1915(e)(2)(B), the court shall dismiss an action filed *in forma pauperis* if it determines that the action: “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.”

In reviewing these pleadings, the Court is mindful of Plaintiff’s *pro se* status. This Court is charged with liberally construing the pleadings of a *pro se* litigant. *See, e.g., De’Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003). The requirement of a liberal construction does not mean, however, that the Court can ignore a plaintiff’s clear failure to allege facts that set forth a cognizable claim, or that a court must assume the existence of a genuine issue of material fact where none exists. *See United States v. Wilson*, 699 F.3d 789, 797 (4th Cir. 2012).

### **Discussion**

After reviewing the record and the R&R, the Court finds the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and adopts the R&R as the order of the Court. The Court finds no clear error with the Magistrate Judge's findings that Plaintiff fails to state claim under the doctrines of *Rooker-Feldman*, judicial immunity, and because he fails to plead facts sufficient to bring this action within the jurisdiction of this Court. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

### **Conclusion**

For the reasons set forth above, the Court agrees with and adopts the R&R (Dkt. No. 19) as the order of the Court and therefore dismisses this action without prejudice and without issuance and service of process.

**AND IT IS SO ORDERED.**



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Richard Mark Gergel  
United States District Court Judge

October 24, 2013  
Charleston, South Carolina